intended to further favor seducers in those jurisdictions where they are already favored by adherence to an artificial form of action which often operates to prevent the enforcement of a morally just demand."

BANKRUPTCY—PAYMENT TO BANK OF PRE-EXISTING DEBT NOT A PREFERENCE.—The bankrupt had borrowed $2,000.00 from defendant bank, giving notes therefor; when the notes were due a loan was effected elsewhere for $3,000.00 which amount was deposited in the defendant bank to the credit of the bankrupt. A check to the order of the defendant bank for the amount of the debt, with interest, was then drawn against this deposit. Bankruptcy ensuing within four months, the trustee sues to recover the amount so paid, on the ground that the payment operated as a preference. *Held* that such payment did not amount to a preference and the bank was permitted to retain the money.—*Walsh* v. *First Nat. Bank of Maysville* (6th C. C. A. 1913), 29 Am. B. R. 118.

In the absence of collusion and fraud a bank of deposit has always been permitted to set-off debts owing it and due from a bankrupt against any deposits it may have of the bankrupt. In *N. Y. County Bank* v. *Massey,* 192 U. S. 138, such a right was declared to exist, the court saying relative to the nature of a bank deposit, "It is not a transfer of property as a payment, mortgage, gift or security. It is true it creates a debt,—but it does not enlarge the scope of the statute defining preferences so as to prevent set-off recognized within the terms of § 68a." In that case the debts of the bankrupt were due and the entire deposit was set off against the claim of the creditor. The same situation existed in *Irish* v. *Citizens Trust Co.,* 163 Fed. 880, in which deposits were allowed to be set off against matured claims of a creditor bank but not allowed in case of claims unmatured. In *Lowell* v. *International Trust Co.,* 158 Fed. 781, deposits were allowed to be set off against demand loans payable to the creditor bank. *In re Geo. M. Hill & Co.,* 130 Fed. 315, allowed set-off of so much of the claims of the creditor bank as equaled the amount of the bankrupt's deposit, but would not allow it against notes given by the bankrupt to third parties and negotiated to the bank. *In re Little,* 110 Fed. 621, which preceded *Bank* v. *Massey, supra,* announced the same rule as was later sustained in that case. The principal case does not announce any new doctrine but it does present in a slightly varying manner the circumstances under which may arise the always interesting question of a bank receiving what is in effect a preference, though declared by the courts not to be. In the principal case the set-off completely extinguished the claim of the creditor bank, leaving it nothing to prove in the bankruptcy proceedings, while the other reported cases involve situations in which the amount of the creditor's claim has exceeded the bankrupt's deposit. The principle is the same in each instance, however, and the decision not only follows the rule of the adjudicated cases but is in conformity with the law.

BILLS AND NOTES—DELIVERY—CONDITIONS.—Defendant delivered his non-negotiable promissory note to a corporation payee on condition that latter would obtain a hundred secured notes of like amount. The note and chat-

tel mortgage executed to secure it were transferred to the plaintiff. In replevin to recover the property mortgaged, *held,* that a promissory note may be delivered by the maker to the payee upon condition, or as an escrow. *Tovera* v. *Parker et al.,* (Okla. 1912), 128 Pac. 101.

The cases are in conflict upon this point. The following authorities hold that a note may be delivered to the party in whose favor it is drawn, upon a condition, so that until performance of the condition he acquires no rights to enforce it. *Quebec* v. *Hellman,* 110 U. S. 178; *McFarland* v. *Sikes,* 54 Conn. 250; *Perley* v. *Perley,* 144 Mass. 104;*Bookstaver* v. *Jayne,* 60 N. Y. 146. In *McFarland* v. *Sikes, supra,* the court said: "Such a contract cannot become a binding obligation until it has been delivered. Its delivery may be absolute or conditional. If the latter, then it does not become a binding obligation until the condition upon which its delivery depends has been fulfilled." To the contrary are the following cases: *Neely* v. *Lewis,* 10 Ill. 31; *Roche* v. *Roanoke Seminary,* 56 Ind. 198; *Massman* v. *Holscher,* 49 Mo. 87. In *Madison, etc., Plank Road Co.* v. *Stevens,* 10 Ind. 1, the court said that "parol evidence cannot be given to vary the legal effect of such delivery, or the terms of the instrument delivered." The authorities are uniform in holding that a bill or note, as well as a deed, may be delivered as an escrow to a third party. I DANIEL, NEG. INST. (5 Ed.) §68.

BILLS AND NOTES—NO INTEREST ON NOTE PAYABLE "ONE DAY AFTER DATE WITHOUT INTEREST."—In an action on a promissory note made payable "one day after date * * * without interest," the plaintiff contended that interest should begin to run from the date of maturity. *Held,* the note will begin to bear interest only from the time payment is demanded or suit is brought thereon. *Pierpoint* v. *Pierpoint* (W. Va. 1912) 76 S. E. 848.

The court's conclusion is opposed to the well established principle that where there is a contract to pay money on a day certain, whether such contract be express or implied and the money is not paid when due, interest is recoverable on the amount in default from the day when it should have been paid. *Cheek* v. *Waldrum,* 25 Ala. 152; *Gould* v. *Oneonta,* 71 N. Y. 298; *Foote* v. *Blanchard,* 6 Allen 221. The court lays considerable stress on the fact that the note matured one day after date, and concludes therefrom that the "parties could not reasonably have had in mind the interest for one day." But such conclusion rests neither upon authority nor sound reasoning; on the contrary there is respectable authority opposed thereto. In the following cases it was held that interest should begin to run from the day of maturity, even though the note was payable only one day after date, *Powell* v. *Guy,* 20 N. C. 70; *Carter* v. *King,* 11 Rich. (S. C.) 125. See also *Foster* v. *Harris,* 10 Pa. St. 457. In the principal case the court said that "a note payable one day after date is for all practical purposes a note payable on demand." Consequently it applies the rule applicable to demand notes that interest runs only from the time when a demand is made. *Gould* v. *Emerson,* 160 Mass. 438; *Sanborn* v. *U. S.,* 135 U. S. 271. But there are many practical distinctions between paper payable on demand and paper payable one day after date. Paper payable on demand is due forthwith and suit may be brought